



State of Washington
Department of Revenue

Excise Tax Advisory

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BUSINESS TAX UPON SALE OR LEASE OF PATENTS

Issued June 19, 1970

Is the business and occupation tax under the Service and Other Activities classification to be collected upon the sale of patents or upon royalties received for allowing lessees to use products or processes held under patent?

The taxpayer argued that amounts received were from sales of capital assets rather than for the use of patent rights, and so were exempt as a "casual sale" under Rule 106.

The department held that, according to the facts of the case, the income is subject to the business tax under the Service classification, whether the amounts received constituted gross proceeds from the sale of patents or royalties received for the allowance of certain patent rights. There are three possible designations for this income: (1) income received from a "casual or isolated sale", (2) income received from a sale in the ordinary course of business, or (3) royalties received from license agreements. In the present case the income fell within either the second or third designation so the business and occupation tax was due. The income was received by the taxpayer under license agreements in a regular, recurrent, and continuing part of the taxpayer's business operation. The activities of his research department continue on a regular course of business which may yield further income under similar license agreements. Thus the income was not received from a "casual or isolated sale," but in the regular course of business. If the facts showed that the transaction was a "casual or isolated sale," it would be exempt from the business tax under Rule 106. Finally, if income was received as a royalty from license agreements, it would be subject to the business tax under RCW 82.04.080 and RCW 82.04.220. To decide whether the transaction was a sale or a mere license to use, the department would determine if the purported licensee has a right of assignment (sale) or if the licensor retains residual patent ownership rights along with the right to assign them (lease).

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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